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FEDERAL HOUSING FINANCE AGENCY

FEDERAL HOUSING FINANCE BOARD

12 CFR Parts 912 and 997

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

Office of Federal Housing Enterprise Oversight

12 CFR Parts 1780 to 1799

RIN 2590-AA52

Repeal of Regulations

AGENCIES: Federal Housing Finance Agency; Federal Housing Finance Board; and Office of Federal Housing Enterprise Oversight.

ACTION: Final rule.

SUMMARY: The Federal Housing Finance Agency (FHFA) is repealing two obsolete and outdated Federal Housing Finance Board (Finance Board) regulations, which relate to meetings of the Board of Directors of the Finance Board and the manner of calculating the Resolution Funding Corporation (RefCorp) obligations of the Federal Home Loan Banks (Banks), respectively. FHFA is also repealing certain parts of the Office of Federal Housing Enterprise Oversight (OFHEO) regulations currently designated as reserved and an associated subchapter, which will be empty after the repeal of those parts. This final rule repeals the regulations and subchapter in their entirety.

DATES: This rule is effective on [INSERT DATE 30 DAYS AFTER DATE OF PUBLICATION IN THE FEDERAL REGISTER].

FOR FURTHER INFORMATION CONTACT: Michou H.M. Nguyen, Assistant General Counsel, (202) 414-3810, Office of General Counsel, Federal Housing Finance Agency, Fourth Floor, 1700 G Street, NW., Washington, DC 20552. The telephone number for the Telecommunications Device for the Deaf is (800) 877-8339.

SUPPLEMENTARY INFORMATION:

I. Background and Analysis

A. Creation of the Federal Housing Finance Agency and Recent Legislation

Effective July 30, 2008, the Housing and Economic Recovery Act of 2008 (HERA), Public Law No. 110-289, 122 Stat. 2654, created FHFA as a new independent agency of the Federal Government, and transferred to FHFA the supervisory and oversight responsibilities of OFHEO over the Federal National Mortgage Association, and the Federal Home Loan Mortgage Corporation (collectively, the Enterprises), the oversight responsibilities of the Finance Board over the Banks and the Office of Finance (OF) (which acts as the Banks' fiscal agent) and certain functions of the Department of Housing and Urban Development. See id. at section 1101, 122 Stat. 2661-62. FHFA is responsible for ensuring that the Enterprises and the Banks operate in a safe and sound manner, including that they maintain adequate capital and internal controls, that their activities foster liquid, efficient, competitive and resilient national housing finance markets, and that they carry out their public policy missions through authorized activities. See id. at section 1102, 122 Stat. 2663-64. The Enterprises, the Banks, and the OF continue to operate under regulations promulgated by OFHEO and the Finance Board,

respectively, until such regulations are superseded by regulations issued by FHFA. See id. at sections 1301, 1302, 1311, 1312, 122 Stat. 2794-95, 2797-98.

B. Considerations of Differences Between the Banks and the Enterprises

Section 1201 of HERA requires the Director, when promulgating regulations “of general applicability and future effect” relating to the Banks, to consider the differences between the Banks and the Enterprises as they may relate to the Banks’ cooperative ownership structure; mission of providing liquidity to members; affordable housing and community development mission; capital structure; and joint and several liability. See section 1201, Public Law No. 110-289, 122 Stat. 2782-83 (amending 12 U.S.C. 4513). This final rule does not impose any new obligations on the Banks, but instead simply removes two existing Finance Board regulations that, as a result of other events, no longer have any practical or legal effect. Furthermore, as explained below, the repeal of parts 912 and 997 of title 12 of the Code of Federal Regulations (CFR) would not have a “future effect” on the rights and responsibilities of the Banks. For these reasons, FHFA believes that a section 1201 analysis is not required for this final rule.

C. Part 912 (Meetings of the Board of Directors of the Finance Board)

Part 912 of title 12 of the CFR was issued by the Finance Board pursuant to the Government in the Sunshine Act (Sunshine Act), which generally requires that meetings of Federal agencies that are headed by collegial bodies be open to the public, and that such agencies promulgate regulations to implement the provisions of the Sunshine Act. Section 2 of the Sunshine Act states that the purpose of the Act is to provide the public the “fullest practicable information regarding the decisionmaking processes of the Federal Government” while protecting legitimate individual privacy and “the ability of

the Government to carry out its responsibilities.” Public Law No. 94-409, section 2, 90 Stat. 1241 (Sept. 13, 1976) reprinted in 5 U.S.C. 552b notes. In order to implement the purposes of the Sunshine Act as articulated in Article 2, part 912 was designed to provide the public with access to information regarding the decision-making processes of the Board of Directors of the Finance Board, while protecting the privacy rights of individuals and the ability of the Board of Directors of the Finance Board to carry out its responsibilities. Part 912 accomplished these goals through the use of various procedures applicable to open and closed meetings of the Board of Directors of the Finance Board.

The Sunshine Act does not apply to FHFA, which is not administered by a collegial body. For purposes of 5 U.S.C. 552b, the term “agency” means “any agency...headed by a collegial body composed of two or more individual members....” FHFA is headed by a single Director and therefore does not fall within the scope of this definition. Consequently, the procedures that the Finance Board had adopted in part 912 for its board meetings are no longer necessary, and should not be adopted by FHFA, because FHFA does not have a board of directors and is not subject to the Sunshine Act. Therefore, FHFA is hereby repealing part 912 in its entirety.

D. Part 997 (RefCorp Obligations of the Banks)

In 1989, Congress established RefCorp as a vehicle to provide funding for the Resolution Trust Corporation to finance resolution of the savings and loan crisis. 12 U.S.C. 1441b(a), (b). RefCorp issued approximately \$30 billion of long-term bonds, the last of which will mature in April 2030. The interest due on the RefCorp bonds is paid from several sources, including mandatory contributions from the Banks. As initially enacted, the law required the Banks to contribute \$300 million annually toward the

RefCorp interest payments. Public Law No. 101-73, Title V, section 511(a), 103 Stat. 394, (August 9, 1989). In 1999, the Gramm-Leach-Bliley Act changed the manner in which the Banks' RefCorp annual contributions were to be calculated by requiring each Bank to pay 20 percent of its annual net earnings, rather than \$300 million. Public Law No. 106-102, Title VI, section 607(a), 113 Stat. 1455, (November 12, 1999), codified at 12 U.S.C. 1441b(f)(2)(C)(i). Those amendments further provided that the Banks' RefCorp obligation was to terminate when the value of the contributions made under the revised formula equaled the value of a benchmark annuity of \$300 million per year that commenced when the RefCorp bonds were issued and ended on their maturity date. The Finance Board promulgated part 997 to implement those Gramm-Leach-Bliley Act amendments, and the regulations specified the method to be used for making the present value calculations required to determine the value of the Banks' payments, relative to the benchmark annuity, and for adjusting the termination date for the payments.

This year, after consulting with the Department of the Treasury and conducting the calculations in accordance with part 997, FHFA determined that the RefCorp payment made by the Banks on July 15, 2011, caused the value of all RefCorp payments made by the Banks to that date to equal the value of the benchmark annuity, which terminated the obligation of the Banks to make any further contributions toward the debt service for the RefCorp bonds. See 76 FR 49477 (August 10, 2011). The termination of the Banks' required RefCorp payments made part 997, which relates solely to the calculation of the aggregate value of, and end date, for those payments, unnecessary and of no effect. Therefore, FHFA is hereby repealing part 997 in its entirety.

E. Parts 1781 to 1799 and Subchapter D

Currently, parts 1781 to 1799 of title 12 of the CFR, which are OFHEO regulations, are designated as “reserved.” These reserved parts are also currently the only items under subchapter D (Rules of Practice and Procedure) of chapter 17 of title 12. Because these parts contain no substantive provisions, there is nothing to revise and relocate to the FHFA regulations, as is the case with other OFHEO and Finance Board regulations. Nonetheless, unless FHFA affirmatively removes the reference to those parts as being reserved and removes subchapter D, those references and an empty subchapter D will remain in the CFR after FHFA has removed or relocated all of the other substantive OFHEO regulations. Therefore, in the interest of ensuring that all OFHEO regulations that will not be carried forward into the FHFA regulations are removed, FHFA is hereby repealing parts 1781 to 1799 and subchapter D in their entirety.

II. Notice and Public Participation

FHFA finds that good cause exists for adopting these rule changes as a final rule without public notice and comment under 5 U.S.C. 553(b)(B) because the subject regulations currently have no legal or practical effect and thus their removal would not alter the rights or responsibilities of any party. The provisions of part 912 relate solely to the operations of the Board of Directors of the Finance Board, which no longer exists. The provisions of part 997 relate solely to the manner in which the Finance Board and FHFA calculate the Banks’ RefCorp obligation, which has been terminated. The references to the “reserved” parts of the OFHEO regulations in subchapter D have no substantive effect on any party. None of these regulations includes provisions that are appropriate for FHFA to carry over and incorporate into its own regulations, and thus

they should be removed from the CFR. For these reasons, FHFA believes that public comments are unnecessary and would serve no purpose.

III. Paperwork Reduction Act

The final rule does not contain any collections of information pursuant to the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 et seq.). Therefore, FHFA has not submitted any information to the Office of Management and Budget for review.

IV. Regulatory Flexibility Act

The final rule applies only to the Banks and Enterprises, which do not come within the meaning of small entities as defined in the Regulatory Flexibility Act (RFA). See 5 U.S.C. 601(6). Therefore in accordance with section 605(b) of the RFA, FHFA certifies that this final rule will not have a significant economic impact on a substantial number of small entities.

List of Subjects

12 CFR Part 912

Sunshine Act.

12 CFR Part 997

Federal home loan banks.

Accordingly, for reasons stated in the preamble and under the authority of 12 U.S.C. 4511, 4512, 4513, and 4526, FHFA is amending subchapters B and L of chapter IX and subchapter D of chapter XVII of title 12 of the Code of Federal Regulations as follows:

CHAPTER IX—FEDERAL HOUSING FINANCE BOARD

SUBCHAPTER B—FEDERAL HOUSING FINANCE BOARD ORGANIZATION AND OPERATIONS

PART 912—[Removed]

1. Remove part 912.

SUBCHAPTER L—NON-BANK SYSTEM ENTITIES

PART 997—[Removed]

2. Remove part 997.

**CHAPTER XVII—OFFICE OF FEDERAL HOUSING ENTERPRISE
OVERSIGHT, DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT**

SUBCHAPTER D—RULES OF PRACTICE AND PROCEDURE—[Removed]

3. Remove subchapter D, consisting of reserved parts 1780 to 1799.

_____ Dated: November 17, 2011____
Edward J. DeMarco,
Acting Director, Federal Housing Finance Agency.

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